IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9198 OF 2004
AND
WRIT PETITION NO.9190 OF 2004

Malegaon Municipal Corpn.
Through its Commissioner ..Petitioner

V/s.

Shri Vijaykumar Ardjundas Luthra .. Respondent.

Mr.S.M.Sabrad for the petitioner.

**CORAM : F.I. REBELLO, J.**

**DATED : 19TH JANUARY, 2005.**

P.C. :

1. Both the petitions can be disposed of by this common order. In writ petition nO.9189 of 2004, the prayer of the plaintiff to correct affidavit has been rejected by order dated 31.1.2004. Petitioners herein cannot be aggrieved. Hence, writ petition rejected.

2. The grievance of the petitioner in writ petition No.9190 of 2004 is that when the court permitted respondent to substitute affidavit, it was only to correct typographical and grammatical errors and not

to file affidavit by way of examination in chief and include new facts which were not included in the first affidavit. Hence, they applied for dismissal of the suit under Order 39 Rule 11. The learned trial court on hearing the arguments held that provisions of Order 39 Rule 11 would not be attracted. The trial court further held that order granting permission to file fresh affidavit was without conditional leave and not contrary to its earlier order. In light of that, dismissed the application filed by the petitioner herein. The present petition is directed against that order.

3. After hearing the learned counsels, in my opinion this would not be a fit case where this court should exercise its extraordinary jurisdiction. More so, after the court which passed the order permitting substitution of affidavit has held that no condition was imposed on respondents while filing fresh affidavit. At the highest, if in the present affidavit there is any evidence which goes beyond the pleadings it would be open to petitioner to contend that the evidence cannot be considered while finally arguing the matter. With the above observations, both the petitions stand disposed of.

(F.I. REBELLO, J.)